

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - June 21, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2010-10999

DECISION & ORDER

Christopher Byrnes, et al., plaintiffs, v St. Luke's Cornwall Hospital, defendant third-party plaintiff-respondent, Randazzo's Landscaping, Inc., defendant third-party defendant-appellant.

(Index No. 7677/08)

Craig P. Curcio, Middletown, N.Y. (Kevin P. Ahrenholz of counsel), for defendant third-party defendant-appellant.

Feldman, Kleidman & Coffey, LLP, Fishkill, N.Y. (Suzanne Konunchuk of counsel), for defendant third-party plaintiff-respondent.

In an action to recover damages for personal injuries, etc., the defendant third-party defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Orange County (Alfieri, J.), dated September 30, 2010, as denied that branch of its motion which was for summary judgment dismissing the third-party complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff Christopher Byrnes allegedly slipped and fell on a sheet of ice in the parking lot of the defendant third-party plaintiff, St. Luke's Cornwall Hospital (hereinafter the hospital). The defendant third-party defendant, Randazzo's Landscaping, Inc. (hereinafter Randazzo), was a contractor hired to perform snow removal services for the hospital. After the plaintiffs commenced the instant action against the hospital and Randazzo, the hospital cross-claimed against Randazzo for contribution and contractual indemnification. After summary judgment was

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awarded to Randazzo, inter alia, dismissing those cross claims, the hospital commenced a third-party action against Randazzo, seeking common-law indemnification. Randazzo moved, among other things, for summary judgment dismissing the third-party complaint, and the Supreme Court denied the motion. We affirm insofar as appealed from.

Randazzo failed to establish its prima facie entitlement to judgment as a matter of law dismissing the third-party complaint. Triable issues of fact exist as to whether it failed to salt or sand the parking lot after plowing was completed, as required under its snow removal contract with the hospital, and, if so, whether its failure to do so was the sole cause of the injured plaintiff's accident (see *Foster v Herbert Slepoy Corp.*, 76 AD3d 210, 216; *Wheaton v East End Commons Assoc., LLC*, 50 AD3d 675, 677; *Cochrane v Warwick Assoc.*, 282 AD2d 567, 568). Moreover, contrary to Randazzo's contention, the third-party action was not barred by res judicata or collateral estoppel (see *Paz v Trump Plaza Hotel & Casino*, 43 AD3d 805, 805-806; *Parada v City of New York*, 283 AD2d 314, 314-316).

Accordingly, that branch of Randazzo's motion which was for summary judgment dismissing the third-party complaint was properly denied, regardless of the sufficiency of the opposing papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

MASTRO, J.P., CHAMBERS, AUSTIN and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court